

Case No. 5:06-CV-2548
Gwin, J.

On June 5, 1993, Petitioner Wasniewski and Respondent Johannsen married in Poland. *Id.* On March 25, 1994, the couple bore Pawel. *Id.* On February 18, 2003, the couple divorced. *Id.* On October 31 or November 1, 2004, Johannsen took Pawel from her mother's house in Inowroclaw and to Amsterdam and then to Minnesota. *Id.* Once in the United States, Johannsen remarried, moved to Maryland, then Ohio, and now lives with Pawel in Nebraska. [Docs. 1, 29.]

With this action, Wasniewski seeks the return of Pawel, thirteen years old, to his custody in Poland. [Docs. 1, 25, 29.] According to Wasniewski, the Polish court's divorce decree granted him parental authority over Pawel. [Doc. 1.] Johannsen admits that she took Pawel from Poland without Wasniewski's prior knowledge or permission. [Doc. 3.] However, Johannsen contests the illegality of her removal of Pawel to – and retention in – the United States. *Id.* Thus, Johannsen counterclaims to retain custody of Pawel in the United States. *Id.*

In the instant motion, Wasniewski asks the Court to appoint a guardian *ad litem* for Pawel. [Doc. 25.] Johannsen does not oppose Wasniewski's motion, but seeks to impose certain conditions upon the appointment. [Doc. 28.] Of relevance to this motion, Johannsen asks that the Court appoint an “experienced domestic relations lawyer practicing in Cleveland, Ohio” in the dual capacity of guardian *ad litem* and attorney for Pawel. *Id.* Johannsen would like the guardian-attorney to investigate Pawel's “best interests” under Ohio's domestic relation laws, although this type of inquiry generally goes well-beyond the Court's jurisdiction under the Hague Convention. *Id.* Finally, Johannsen asks that the Court require Wasniewski to pay the costs associated with the appointment of the guardian *ad litem*. *Id.*

The Court considers and determines Johannsen's conditions as relevant to this motion.

II. Legal Standard

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The United States' International Child Abduction Remedies Act, 42 U.S.C. §§ 11601-11610, ratifies the Hague Convention and gives a United States district court jurisdiction over this action. *See* 42 U.S.C. § 11603(a). Pursuant to the Hague Convention, a district court may determine the merits of an abduction claim, but not the merits of the underlying custody claim. *See Friedrich v. Friedrich*, 78 F.3d 1060, 1063-64 (6th Cir. 1996) (instructing that “a court in the abducted-to nation has jurisdiction to decide the merits of an abduction claim, but not the merits of the underlying custody dispute. The Hague Convention is generally intended to restore the pre-abduction status quo and to deter parents from crossing borders in search of a more sympathetic court”).

Under Ohio law, a “court shall appoint a guardian *ad litem* to protect the interests of a child . . . when . . . [t]he interests of the child and the interests of the parent may conflict . . . [or a]ppointment is otherwise necessary to meet the requirements of a fair hearing.” OHIO JUV. R. 4(B)(2), (8). Ohio law also provides that “[w]hen the guardian *ad litem* is an attorney admitted to practice in this state, the guardian may also serve as counsel to the ward providing no conflict between the roles exist[s].” *Id.* at 4(C)(1). In Ohio, a court may abuse its discretion by failing to appoint or inquire into the necessity of a guardian *ad litem* if there may exist a conflict of interest between a minor and his legal guardians. *In re Slider*, 826 N.E.2d 356 (Ohio Ct. App. 2005).

The International Child Abduction Remedies Act requires any court ordering the return of a child under the Hague Convention to award fees and costs to the successful party unless such order would be “clearly inappropriate.” 42 U.S.C. § 11607(b)(3).

III. Analysis

Petitioner Wasniewski and Respondent Johannsen do not dispute the utility of the Court's appointment of a guardian *ad litem* for Pawel in this case. The Court finds this request appropriate

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under the circumstances and pursuant to Ohio law. Further, the Court finds well-taken the parties' agreement that the appointed guardian *ad litem* should also act as Pawel's attorney to pursue his rights as provided under the Hague Convention.

The Court comes to this conclusion upon recognition that, in this action, Pawel's interests may conflict with those of his parents and a guardian *ad litem* may be necessary to afford him and his family a fair hearing. *See* OHIO JUV. R. 4(B)(2), (8). To this end, the Court instructs Petitioner Wasniewski and Respondent Johannsen to agree to an attorney located in the Northern District of Ohio to act in the dual role of Pawel's guardian *at litem* and attorney. The parties shall then inform the Court of their agreed-to attorney. The parties shall also inform the Court if they cannot come to an agreement and the Court will select local counsel to act as Pawel's guardian *ad litem* and attorney.

In coming to this finding, the Court agrees with Petitioner Wasniewski that the role of Pawel's guardian *ad litem* and attorney "is not to help Respondent prove her case and secure the custody of her child. Rather, the guardian's role is to objectively ensure that Pawel is represented within the parameters of the Hague Convention and to communicate his wishes to the Court to the extent they are relevant." [Doc. 29 at 3.] Thus, the Court also agrees that Pawel's guardian *ad litem* need not act as an investigator for the Court pursuant to Ohio Revised Code § 3109.04(C).

The Court takes this position, because, in this action, it generally need not investigate the "character, family relations, past conduct, earning ability, and financial worth of each parent." *See* OHIO REV. CODE ANN. § 3109.04(C). Instead, the Hague Convention and International Child Abduction Remedies Act establish the Court's jurisdiction to decide the merits of Petitioner Wasniewski's abduction claim, but not necessarily the merits of Pawel's underlying custody

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dispute. *See Friedrich*, 78 F.3d at 1063-64. Thus, the Court will allow Pawel's agreed-to guardian *ad litem* and attorney to assist it in any Hague Convention inquiry, but will not allow the representative to advocate for Respondent Johannsen. Relatedly, the Court will not foreclose receiving Pawel's direct testimony to the extent that it, also, provides insight into the just outcome of this dispute.

Finally, pursuant to the relevant directive of the International Child Abduction Remedies Act, the Court defers allocating all of the costs of Pawel's guardian *ad litem* and attorney until the parties conclude this action. *See* 42 U.S.C. § 11607(b)(3). However, the Court directs that the parties shall each pay one-half of the reasonable "up-front" costs needed to retain Pawel's guardian *ad litem* and attorney.

IV. Conclusion

For these reasons, the Court **GRANTS** Wasniewski's motion for appointment of a guardian *ad litem* subject to conditions discussed in this Opinion and imposed by this Order.

IT IS SO ORDERED.

Dated: May 16, 2007

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE